

ASSOCIATION OF OIL PIPE LINES

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NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Re: AOPL Comments on Staff Draft NEPA Task Force Report

Dear Chairwoman McMorris and NEPA Task Force Members:

I am writing on behalf of the Association of Oil Pipe Lines to comment on the *Initial Findings and Draft Recommendations* of the Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act of the Committee on Resources, U.S. House of Representatives. The Association of Oil Pipe Lines ("AOPL" or "Association") is a non-profit trade association that acts as an information clearinghouse for the public, the media and the pipeline industry; provides coordination and leadership for the industry's ongoing Environmental and Safety Initiative; and represents common carrier crude and product petroleum pipelines in Congress, before regulatory agencies, and in the federal courts.

AOPL commends the NEPA Task Force for its thoughtful examination of NEPA itself, and the manner in which the law is implemented. The Task Force's work represents an important exercise of Congress' oversight role. The record assembled by the Task Force should prove valuable to Congress, the Administration, and all other parties who seek to improve the manner in which NEPA is administered so that the laudable purpose and policy of the law can be achieved in a more efficient and predictable manner.

AOPL wishes to emphasize its particular support for those recommendations that would promote timely completion of environmental reviews by, among other things, enforcement of deadlines and page limits (i.e., Recommendations 1.2, 2.2, 7.2). In this regard, we would suggest that the Task Force consider also recommending changes in the system by which the Environmental Protection Agency reviews and ranks environmental statements under Section 309 of the Clean Air Act (42 U.S.C. § 7609). It should be within EPA's abilities, and is certainly within its authorities under Section 309 and NEPA itself, to consider timeliness and brevity among the other criteria it applies. Environmental reviews that are untimely or

unwieldy fail to comply with CEQ's regulations, impose unwarranted burdens on project proponents and others and, as such, deserve poor and, in some cases, failing grades. It merits the Task Force's notice, too, that EPA's current rating system lacks a tier for "excellent" work. In other words, the rankings system does not include the type of positive grade that might serve as an incentive for top quality NEPA work by the agencies.

AOPL also strongly endorses those recommendations intended to improve coordination and cooperation among federal agencies (i.e., Recommendations 6.1, 6.2, 7.1, 9.1). In those cases where NEPA analyses are required for petroleum pipelines, it is common for two or more federal agencies to be involved in some fashion. For example, a right of way over federal land could involve regulatory decisions from one or more land management agency (e.g., Bureau of Land Management or U.S. Forest Service), the agency charged with implementation of the Endangered Species Act (e.g., U.S. Fish and Wildlife Service or NOAA Fisheries), the U.S. Army Corps of Engineers, and others.

The agencies with jurisdiction in a particular matter should organize their regulatory work in a sensible, coordinated fashion to support and move in tandem with the analytical work performed under NEPA. We agree particularly with Recommendation 7.1 that the Council on Environmental Quality be given the resources and unambiguous authority to address and remedy those situations where agencies fail to work efficiently together to fulfill NEPA's obligations.

We also call to the Task Force's attention the NEPA-related steps already taken by the Administration pursuant to the Pipeline Safety Improvement Act of 2002 (P.L. 107-355). That law directed federal agencies and departments having jurisdiction over the permitting of work needed for pipeline repairs to establish a coordinated and expedited pipeline repair permit review process. Under CEQ's leadership, the Department of Transportation, Environmental Protection Agency, Department of the Interior, Department of Commerce, Department of Defense, Federal Energy Regulatory Commission, Department of Agriculture, Department of Energy, and Advisory Council on Historic Preservation executed the May 2004 Interagency Memorandum of Understanding on Coordination of Environmental Reviews for Pipeline Repair Projects (<http://www.etf.energy.gov/pdfs/PipelineMOU.pdf>). It may serve the Task Force's purpose to consult with the House Committees on Transportation and Infrastructure and on Energy and Commerce to determine whether the authors of the Pipeline Safety Improvement Act believe that the Administration has taken full advantage of the authorities and directives under that Act.

Recommendation 9.2 raises a critical point, namely, the adequacy of agency funding for NEPA compliance and administration. AOPL believes that the timeliness and quality of NEPA compliance would benefit considerably if those agencies involved in NEPA reviews of pipeline projects enjoyed proper funding and staff resources. It is not helpful to our members when properly trained agency officials are not available to carry out government's role relative to pipeline construction or operation.

The Association, while strongly supportive of the Task Force's work reflected in the *Initial Findings and Draft Recommendations*, does wish to express concern with respect to

Recommendation 2.1 - Direct CEQ to prepare regulations giving weight to localized comments. This recommendation proposes that: “When evaluating the environmental impacts of a particular major federal action, the issues and concerns raised by local interests should be weighted more than comments from outside groups and individuals who are not directly affected by that proposal.” We respectfully suggest that the Task Force reconsider and step away from this recommendation because it has the potential, if implemented, to adversely impact new and existing interstate energy infrastructure.

Our concern is based on the experience of our member companies in seeking to build and safely operate our Nation’s 200,000 miles of interstate crude oil and petroleum products pipelines. There is no question that the perspectives of affected local interests deserve full consideration by agencies when making decisions under NEPA. In those instances where the positive or negative impacts of a proposed action are of only local interest, it would seem appropriate to give considerable weight to “localized comments.” But pipelines, like many other forms of transportation, communication and energy infrastructure, often span many states, crossing a multitude of local jurisdictions and local interests some of whom will not directly benefit from the passage of that infrastructure.

Pipelines and other interstate infrastructure serve the interests of the Nation as a whole. Local concerns and local interests are appropriate factors to consider when agencies make decisions about interstate infrastructure, but it would, quite literally, not be in the National interest to elevate local concerns over the Nation’s need for interstate infrastructure. Recommendation 2.1 has the potential to stand in the way of building and safely operating our pipeline infrastructure.

We would be happy to meet with you to discuss any of the matters raised in this letter.

Sincerely,

A handwritten signature in black ink, reading "Benj. S. Cooper", followed by a horizontal line. The signature is written in a cursive, slightly stylized font.

Benjamin S. Cooper
Executive Director